

# TAX INFO

Dated 27/08/2022

Latest update on GST Law: **GST registration cannot be cancelled on mere whims & fancies of proper officer** as given in judgement by **Allahabad High Court**.

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<b>Name of Petitioner</b>	M/S Ram Krishna Garg Supplier
<b>Name of Respondent</b>	State Of U.P.
<b>Court</b>	Allahabad High Court
<b>Date of Judgement</b>	15.07.2022
<b>Appeal No.</b>	WRIT TAX No. - 1064 of 2021

## **Brief Facts of the Case Law:**

Present writ petition has been filed against the order dated 23.9.2021 passed by appellate authority confirming the order dated 20.07.2021 passed by Assistant Commissioner cancelling the petitioner's registration. Earlier, the petitioner was given the notice dated 8.6.2021 making mention of certain infractions committed by him under other laws (excluding the Act), in the execution of certain service contracts awarded by the Nagar Palika Parishad, Atarra, Banda. Petitioner had submitted its reply thereto. Thereafter, on 09.07.2021, a show cause notice was issued with reference to Section 29(2)(a) of the Act. But despite of the reply furnished by the petitioner, the said authority proceeded to pass the impugned order dated 20.07.2021 determining the amount payable **pursuant to cancellation as NIL**. That order has been confirmed in appeal by referring to allegations contained in the first notice dated 08.06.2021 that was issued with respect to infractions made under other laws.

## **Findings and Decision of the Court:**

Cancellation of registration has most serious civil consequences. While Section 29(1) of the Act provides for specific grounds for cancellation with effect from the date of occurrence of certain events, sub-section (2) provides for harsher consequences including cancellation of registration with retrospective date. However, a registration may not be cancelled on mere whims and fancies of the Proper Officer. It may be cancelled under subsection (2) of Section 29 of the Act, if the registered person contravenes any provision of the Act or Rule as may have been prescribed for that purpose or if such person does not furnish returns for three tax periods consecutively or does not furnish returns for six months continuously or he does not commence business within six months of grant of registration or he is found to have obtained registration by means of fraud, wilful misstatement or suppression of facts.

In the present case, the SCN was issued with reference to Section 29(2)(a) of the Act, inasmuch as, the notice dated 9.7.2021 alleged non-compliance of specified provisions of GST Act or the Rules. However, that notice did not disclose the exact violation of the Act or the Rules, alleged. Unless that allegation was specified in the notice with details and unless material considered adverse to the petitioner had been confronted to it for the purposes of eliciting its reply thereto, the notice dated 9.7.2012 would remain completely vague and mute.

A person who may be given with the notice proposing such a harsh civil consequence had a perfect right to be informed of the exact allegations levelled against him. In a way, the harshest penalty contemplated is cancellation of registration of the assessee. The cancellation of the registration has the consequence of bringing the business of an assessee to a complete stand still. It's a death of his business. It has adverse impact on his fundamental right to do business.

The petitioner was not confronted either with the substance of the allegation of violation of the provisions of the Act and the Rules framed thereunder and it is not shown that alleged violations were such, as may have warranted cancellation of the petitioner's registration under Section 29(2)(a) of the Act. Also, since the material if any that may have founded the basis for such allegation had not been confronted to the petitioner, the entire exercise would remain an irregular exercise. In fact, the proceedings had been initiated, continued and concluded without jurisdictional facts shown to exist. Since the cancellation notice did not refer to the notice dated 8.6.2021, reference made to it in the appeal order is irrelevant and uncalled. Even then, it does not make out allegation of violation of Section 29(2)(a) of the Act.

In view of the above, the impugned orders dated 23.09.2021 and 20.07.2021 were quashed and the restoration of the registration of the petitioner was directed. Further, it was left open to the revenue authorities to initiate fresh proceedings, if warranted, on cogent material and basis.

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